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Subcommittee on Financial Institutions &  
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COMMITTEE ON  
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INFRASTRUCTURE  
Subcommittee on Highways, Transit & Pipelines  
Subcommittee on Railroads

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Congress of the United States  
House of Representatives  
Washington, DC 20515-1410

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September 8, 2003

Bryant L. VanBrakle, Secretary  
Federal Maritime Commission  
800 North Capitol Street, NW  
Washington, DC 20573

cc: 020/030  
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RE: Petition P3-03

Dear Mr. Van Brakle:

UPS has petitioned the Commission for an exemption from the rule prohibiting Non-Vessel Operating Common Carriers (NVOCCs) from entering into confidential contracts with their customers. I write to urge that the petition receive every favorable consideration appropriate under the circumstances.

When the *Ocean Shipping Reform Act* (OSRA) revisions of 1998 were considered, most NVOCCs were small enterprises that neither owned ocean vessels nor the cargo being shipped. In arriving at the OSRA revisions, Congress considered the entire ocean shipping industry and the role of NVOCCs and determined that they should be regulated differently than vessel operators in order to protect shippers and guarantee liability coverage. One result was the provision that companies owning vessels may engage in

confidential contracting with customers, while companies classified for the purposes of ocean transport as NVOCCs must make their rate structure known through the publication of tariffs. UPS is classified as an NVOCC.

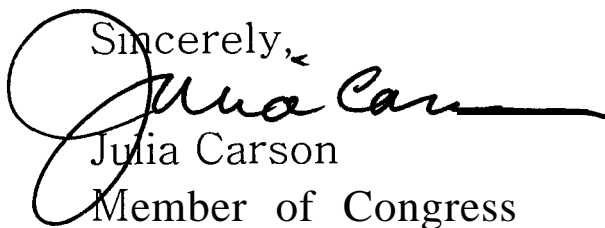
In the years since the passage of OSRA, the U.S. ocean shipping industry has changed dramatically, with unprecedented consolidation of ocean carriers leading to loss of major U.S.-flagged carriers. As this has happened, vertically integrated logistics companies offering a full range of services have arisen to compete with NVOCCs without having to make their tariffs public.

UPS is very different from the companies that were originally the subject of concerns about NVOCCs. The corporation operates an extraordinarily sophisticated integrated intermodal transportation network, including air, rail, surface and NVOCC transportation; is deemed a “carrier” in the surface and air freight industries; and, makes significant annual capital investments in its’ asset-based transportation infrastructure. The character and quality of UPS operations are solid insurance against the risk of non-performance that the tariff publication requirement sought to guard against.

Congress understood that OSRA would bring about dramatic changes in the ocean shipping industry, but neither the speed nor the completeness of these changes was anticipated. Congress did anticipate that changes in the marketplace and the industry would require flexibility in regulation and allocated broad authority to the Commission to assure that dynamic through exemptions. Today, both the operational characteristics of UPS and recent developments within the ocean shipping marketplace militate

in favor of use of that authority to improve the regulatory scheme governing NVOCCs.

Thank you for your every consideration in this matter.

Sincerely,  
  
Julia Carson  
Member of Congress